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him that denies (*Digest*, 22, 3, 2). These and similar rules show that the Romans possessed at least something like a law of evidence, though of course less highly developed than that of the modern English law.

In placing a high estimate upon the relative value of this work, it has not been the intention to disparage the merits of such a really excellent book as that of Greenidge on "The Legal Procedure of Cicero's Time"—a book which contains perhaps the clearest general summary of the criminal practice of the later Republic accessible to the English student, and in fact a book which furnishes an admirable preparation for the study of the more critical work of Strachan-Davidson.

WILLIAM C. MOREY.

The World's Legal Philosophies. By FRITZ BEROLZHEIMER. Translated from the German by Rachel Szold Jastrow. Modern Legal Philosophy Series. vol. II. (Boston: The Boston Book Company, 1912. Pp. lxxvii, 490.)

Comparative Legal Philosophy Applied to Legal Institutions. By LUIGI MIRAGLIA. Translated from the Italian by John Lisle. Modern Legal Philosophy Series. vol. III. (Boston: The Boston Book Company, 1912. Pp. xl, 793.)

These two works were evidently selected for the "Modern Legal Philosophy Series" because in a measure they complement each other. If from Berolzheimer's work one may get the idea that nearly all things worth while, in philosophy or jurisprudence, were "made in Germany," Professor Miraglia will impress the reader with the notion, that most thinking in these fields has been done in Italy. Between the two, an American student ought to get a very fair knowledge of the subject.

He will do so, provided that he manages to understand the subject matter without first going back to his undergraduate work and taking the course in general philosophy which in all probability he failed to take. Without some such preliminary training, it is not clear how he will get much good, among other things from the first part of Miraglia's work, which is a series of exceedingly brief, one might say epigrammatic characterizations of the various systems of philosophy following each other in history. The excessive brevity of these historical paragraphs makes it quite impossible to understand what the writer means, unless one is already acquainted with the body of thoughts referred to.

Berolzheimer also presupposes an acquaintance with the main facts

of the history of philosophy, and the principal technical terms employed by philosophers; but he does not aim at a complete review of all previous thought. This leaves him free to deal at some length with those philosophers whose work is most important for the student of the philosophical basis of law, and it ought to be quite possible for an American lawyer without previous philosophical training to study this work profitably, provided he has some good reference books at his side. For an introduction to "legal philosophy" in the proper sense, the German work seems to be the better adapted; but Professor Miraglia's work will be found exceedingly useful for acquiring a clear notion of the various fundamental concepts of positive law. To this work, the entire second half of the book is devoted.

Miraglia's work dates back some forty years, while that of Professor Berolzheimer was first published in 1905. The difference in time is apparent on every page. The Italian work is imbued with the spirit of the old-fashioned "*laissez faire*" school, although in the edition from which the translation was done a few concessions have been made to the modern spirit of social solidarity. The present stage of capitalism, with its tendency towards combination and monopoly, seems to be quite unknown to the writer. In other ways the work has the earmarks of superannuation. Who, in the presence of modern knowledge of Babylonia, would still speak of the Phoenicians as the "inventors of writing?" As compared to this, Berolzheimer represents the very latest phase of philosophical and juristic thought, so that in this respect also the two works are complementary of each other and justify the judgment of the men who selected them for this series.

The translation of technical works presents difficulties of the very highest order, and these are doubled where familiarity is required with the terminology not of one, but of two intricate sciences. At the same time, faulty translations may almost destroy the usefulness of a work of this character, besides being a grave injustice to the author. If attention is called, below, to a number of obvious and grave errors in translation, this does not necessarily imply that the translators have done their work carelessly or were incompetent. It is done merely so that in a new edition these particular pitfalls may be avoided. The ideal translator must still be born.

Of the two, Professor Berolzheimer's book has suffered the least in the operation. Yet occasionally very annoying errors obscure the sense. Thus "civic" is rarely a proper translation of "*bürgerlich*." In most places where it occurs "middle class" would have given the true meaning.

On page 162, what can an American lawyer understand by "code of the common law of Prussia?" If it is common law, it would not seem to be a code. What is meant is "codification of the law of Prussia," known as the "*Allgemeine Landrecht*." The German term analogous to common law is "*gemeine Recht*." Page 197, "*Urrechte*" does not mean "primitive rights" but "absolute rights," almost precisely as used by Blackstone. "*Geist*," page 222, second paragraph, should have been translated "intelligence," not "spirit." On page 225 the translation "unpremeditated wrong" is misleading. It should have been "naïve wrong," a wrong committed without consciousness that it is wrong. On page 307, "manual labor" does not properly render "*Handwerk*." What is meant is "artisanship." "*Demokratisierend*" is not "demagogic" but "democratizing." On the whole, the translator has been least successful where, instead of following closely the original, she has attempted practically to rewrite a paragraph. Examples may be found on pages 378, 437 and elsewhere.

Less praise can be given to the translation of Professor Miraglia's book. First of all, the proofreader was evidently no linguist. The number of typographical errors in the citations from foreign languages is so great that they constitute a very serious blemish. In fact, there is hardly a sentence in Latin, German or French without ridiculous errors, often such as to make the meaning unintelligible.

Of the errors of translation in this book, the least excusable are those—all too numerous—which were apparently caused by assuming too easily that an Italian word derived from the Latin has the same meaning as the English word of the same derivation. Thus, repeatedly the Italian "*onesto*" becomes "honest," where it means "right." On page 235, "*facoltà*" should be "license," not "faculty." "*Fatale*," on page 269, should be perhaps "predetermined," but certainly not "fatal." "Luminous," on page 380, should have been "clear." "*Esistenza errabonda*," page 421, should have been "migratory existence," not "erring existence." On page 476, "*sottosuole*" is not "subsoil," but the things below the earth, such as minerals or water. Page 483, "*prezzo del lavoro . . . normale*" means, on the other hand, the "normal" price, just as in English, and not "average." Occasionally, the translator follows the Italian spelling, so that, for instance, on page 516 our old friend of school days masquerades as "Zenophon." Cases of this kind could be multiplied almost from every page.

More serious, but also less easily avoided, are errors caused by a misunderstanding of juristic or philosophical technical terms, or an unsuc-

cessful attempt to supply an English technical term where one does not exist.

On page 424, "*liberi livellari*" are by no means "freedmen." The meaning would more nearly be rendered by "freeholders." In the context found on page 426, eminent domain does not render "*dominio eminente*"—what is meant is feudal overlordship. The chapter on "*Obbligazione*" is entitled "Obligations," and in the text come such expressions as "obligations sounding in tort," which to an American lawyer sounds like a most wonderful thing. It is of course asking too much of a translator to make a new technical language, but where the English word commonly has an entirely different meaning, it would have been wise in a foot note to supply an explanation. The unfortunate failure of our English law to have distinct terms for "*lex*" and "*jus*" is no excuse, however, for the remarkable statement, on page 242, that "in Greece there is no word to signify 'law,' because it is resolved in the universal concept of justice." "Right" would at least have come near to expressing the meaning of the text. The term "*dolo*," like its Roman law ancestor "*dolus*," has troubled many a translator in the past. On page 57 it is repeatedly translated fraud, and as a result comes this sentence: "A tort is the result of fraud or harm." What is meant is: "Tort consists of both evil disposition and damage done." The American lawyer must certainly stare when he reads, in section 374, that bailments are contracts without consideration, and much more to similar effect. The whole trouble comes from translating the term "*causa*" by consideration. What the English common law terms a consideration may sometimes be the "*causa*" of a contract, but that term comprises a great many other things. There were other pitfalls in this section, which the translator failed to avoid, more particularly the term "pledges, bailments," which he interpolated unnecessarily in the enumeration of various species of gratuitous contracts. A more correct version would have been "Deposit, loan for use, and gift." Obviously, a pledge is not a "gratuitous" contract, and bailment is a mere general term. On page 737, section 495, what meaning can any one connect with the words: "The right of relationship and the active and passive solidity of the connotation of the family were absolute?" The Italian text, which is not at all obscure, means simply: "The right of the parentele, and the solidarity, active and passive, of the members of the family, were absolutely dominant." Many similar errors could be cited.

The truth is, that English legal terminology is so undeveloped, that at the present time it is not possible to translate a continental law book

without either failing often to convey to the English reader the real meaning of the original, or to make the whole most cumbersome by constant explanations and circumlocutions where the original uses a single, concise phrase. A third way might be to leave a good many foreign law terms untranslated and to add a very full glossary. Perhaps one of the first results of the publication of the present series may be an endeavor on the part of American lawyers to make our own technical languages more precise and full. This again cannot be done without more careful definition and delimitation of the legal concepts for which these terms stand. Thus a few steps may be made in the direction of a legal science for the countries of the English common law, comparable to what is meant thereby on the continent of Europe.

ERNEST BRUNCKEN.

A Short History of the English Law. By EDWARD JENKS.
(Boston: Little, Brown and Company, 1912. Pp. xxxviii,
390.)

This important work by the Director of Legal Studies of the Law Society in London covers its subject in succinct, comprehensive, and accurate fashion, as the title page states, "from the earliest times to the end of the year 1911." Every lawyer should read the book and every student of political science will find it of interest and value to him. Although the style is direct and the expression of the facts is clear, the subject is one which is highly technical in some of its aspects, from which thing it follows that a certain amount of legal knowledge is necessary to appreciate parts of the narrative. Holdsworth's monumental work already has reached its third volume and, in its narrative of the substantive law, has reached only to the time of the Tudors, so that the severest compression was necessary in order to bring the material which Mr. Jenks has used into the compass of one medium sized volume. It is interesting to note that the American edition of the work is dedicated to Mr. Justice Holmes and the frequent references to the *Select Essays in Anglo-American History* are additional proofs that the historical study of the common system of law of England and America has not been limited to either side of the Atlantic. One feature of the book which makes its use extremely convenient is its frequent cross reference by note to the pages where related topics are discussed, making it possible to follow out one topic without wandering helplessly through the whole book. The work is chronologically divided into four periods and the relative